

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 IVAN GOLDSMITH, on behalf  
12 of himself and all others  
13 similarly situated,

14 Plaintiff,

15 vs.

16 ALLERGAN, INC., a Delaware  
17 corporation,

18 Defendant.

CASE NO. 09-CV-7088 PSG

~~[PROPOSED]~~ PROTECTIVE  
ORDER REGARDING  
CONFIDENTIAL INFORMATION  
AND PRIVILEGED  
COMMUNICATIONS

19 Pursuant to the Stipulation and Joint Motion of the parties dated  
20 May 26, 2010, and good cause appearing, IT IS ORDERED that:

21 1. This Protective Order shall govern all discovery conducted in  
22 connection with this action, *Goldsmith v. Allergan, Inc.*, Case No. 09-CV-  
23 7088 PSG (the "Action"), and applies to all documents, the information  
24 contained in documents, and all other information produced or disclosed  
25 during or in connection with this Action, whether revealed in a  
26 document, deposition, other testimony, discovery response or otherwise,  
27 by any party in this Action (the "Supplying Party") to any other party  
28

1 (the "Receiving Party"), when the same is designated in accordance with  
2 the procedures set forth in this Protective Order.

3 2. Third parties who so elect may avail themselves of, and agree  
4 to be bound by, the terms and conditions of this Protective Order and  
5 thereby become a Supplying Party for purposes of this Protective Order.

6 3. The terms "document" and "documents" as used in this  
7 Protective Order means all written material, data, photographs,  
8 videotapes, live-action film, and all other tangible items, whether  
9 produced as a hard copy, CD-ROM, DVD, or in any other electronic  
10 format.

#### 11 **CONFIDENTIAL INFORMATION**

12 4. The term "Confidential Information" as used in this  
13 Protective Order means any information that the Supplying Party  
14 believes in good faith constitutes, reflects, discloses, or contains  
15 information subject to protection under applicable law, whether it is a  
16 document, information contained in a document, information revealed  
17 during a deposition or other testimony, information revealed in an  
18 interrogatory response, or information otherwise revealed.

19 5. Specific documents and interrogatory responses produced by  
20 a Supplying Party shall, if appropriate, be designated as "Confidential  
21 Information" by marking the first page of the document and each  
22 subsequent page thereof containing Confidential Information and any  
23 answer as follows: **"CONFIDENTIAL – SUBJECT TO PROTECTIVE  
24 ORDER."**

25 6. The documents, deposition transcripts, excerpts of deposition  
26 transcripts and discovery responses designated "Confidential – Subject  
27 to Protective Order" will be those documents, deposition transcripts,  
28 excerpts of deposition transcripts and discovery responses that a party

1 believes in good faith constitutes, reflects, discloses, or contains  
2 information subject to protection under applicable law. Confidential  
3 Information also includes documents containing private medical  
4 information that is protected by HIPAA and other similar statutes. Any  
5 documents, deposition transcripts, excerpts of deposition transcripts  
6 and/or discovery responses designated "Confidential – Subject to  
7 Protective Order" shall not be construed as an admission or an  
8 agreement by any party that such documents, deposition transcripts,  
9 excerpts of deposition transcripts, or discovery responses constitute  
10 competent, material, relevant, or admissible evidence in this case.

11 7. Any material produced or provided in this Action for  
12 inspection is to be treated by the Receiving Party as Confidential  
13 Information pending the copying and delivery of any copies of the same  
14 by the Supplying Party to the Receiving Party.

15 8. To the extent that any Confidential Information is used or  
16 discussed when taking a deposition, such portions of such depositions  
17 shall be taken only in the presence of those persons identified in  
18 paragraph 9 and the court reporter and videographer, and all such  
19 Confidential Information shall remain subject to the provisions of this  
20 Protective Order, along with the transcript pages of the deposition  
21 testimony that have been designated "Confidential – Subject to  
22 Protective Order" in the manner set forth below. At the time any  
23 Confidential Information is used in any deposition, the reporter and  
24 videographer will be informed of this Protective Order and will be  
25 required to operate in a manner consistent with this Protective Order.  
26 Any Supplying Party who contends that certain portions of a deposition  
27 transcript should be subject to the Protective Order shall, within ten  
28 calendar days after receipt of the deposition transcript, provide written

1 notice to the Receiving Party identifying by page and line number the  
2 portions of the deposition transcript that should be marked  
3 "Confidential – Subject to Protective Order." The Receiving Party will  
4 then have ten calendar days from service of the written notice to accept,  
5 object, counter-designate, or otherwise respond in writing to each  
6 portion of the deposition transcript that the other party contends should  
7 be marked "Confidential – Subject to Protective Order." Counsel for the  
8 parties shall then meet and confer with one another concerning the  
9 disputed portions of the deposition transcript. If an agreement cannot  
10 be reached between the parties, the Supplying Party shall, within thirty  
11 days from the date the meet and confer discussions end, apply to the  
12 Court for a ruling that the disputed portions of the deposition transcript  
13 should be afforded such status and protection. The Supplying Party who  
14 contends that the disputed portions of the deposition transcript should  
15 be subject to the Protective Order has the burden of proof to establish  
16 that each disputed portion of the deposition transcript should be  
17 afforded such status and protection. Pending a ruling by the Court on  
18 such a motion, and any appeal or final determination of a writ  
19 proceeding from the same, whichever occurs first, this Protective Order  
20 shall remain in effect in all respects with respect to the deposition  
21 transcript.

22 9. Confidential Information shall be disclosed by the Receiving  
23 Party only to the following persons:

24 a. counsel of record for the Receiving Party, and the attorneys,  
25 paralegals, stenographic, and clerical staff employed by such  
26 counsel who are working on this Action under the direction of  
27 such counsel and to whom it is necessary that the materials  
28 be disclosed for purposes of this Action;

- 1 b. in-house counsel employed by the Receiving Party with  
2 responsibility for this Action, and the paralegals and  
3 stenographic and clerical employees of such counsel, and any  
4 employee of the Receiving Party to whom it is necessary to  
5 disclose such information for the purpose of assisting in, or  
6 consulting with respect to, the preparation of this Action;
- 7 c. any outside consultant or expert who is assisting a party in  
8 this Action, to whom it is necessary to disclose Confidential  
9 Information for the purpose of assisting in, or consulting with  
10 respect to, this Action, regardless of whether the consultant  
11 or expert is formally retained by the party itself or by the  
12 party's outside counsel, and provided that no disclosure shall  
13 be made to any expert or consultant who is currently  
14 employed by or currently consults with a competitor of  
15 Allergan. Before disclosing Confidential Information to any  
16 person identified in Paragraph 9 (other than the Court and  
17 its staff) who is, independent of this litigation, a current  
18 director, officer, or employee of a pharmaceutical company,  
19 the party wishing to make such disclosure shall give at least  
20 ten days' advance notice in writing to the counsel who  
21 designated such information as confidential, stating the  
22 names and addresses and pharmaceutical company  
23 affiliations of the person(s) to whom the disclosure will be  
24 made. If, within the ten day period, a motion is filed  
25 objecting to the proposed disclosure, the designated  
26 document or item shall not be disclosed unless and until the  
27 Court denies the motion objecting to the proposed disclosure,  
28 and shall not be disclosed except as permitted by the Court;

- d. the Court and any members of its staff to whom it is necessary to disclose Confidential Information for the purpose of assisting the Court in this Action;
- e. stenographic employees and court reporters recording or transcribing testimony in this Action; and
- f. deposition witnesses, provided that the witness agrees on the record to be bound by the terms of this Protective Order and signs the Certification as required under paragraph 16.

10. Persons having knowledge of Confidential Information by virtue of their participation in the conduct of this Action shall use the Confidential Information only in connection with the prosecution, defense, or appeal of this Action and may not use such Confidential Information for any other purpose nor disclose such Confidential Information to any person who is not listed in Paragraph 9 of this Protective Order.

11. Disclosure of Confidential Information beyond the terms of this Protective Order may be made only if the Supplying Party designating the material as "Confidential Information" consents in writing to such disclosure, or if the Court, after reasonable written notice to all affected parties, orders such disclosure.

12. All persons subject to this Protective Order shall not, under any circumstances, post any Confidential Information on the internet, including on any Web site, chat-room, Web log, or blog. The Confidential Information may not, in any way, be distributed or disseminated, electronically or otherwise, to any person, agency, entity, or corporation who is not a party to this Protective Order.

13. To the extent that any person described in paragraph 9 and subject to this Protective Order is served with a subpoena to produce a



1 Supplying Party's Confidential Information, such person shall promptly  
2 notify the Supplying Party's counsel in writing, by email and facsimile,  
3 of all of the following: (1) the materials that are requested for  
4 production in the subpoena; (2) the date on which compliance with the  
5 subpoena is requested; (3) the location at which compliance with the  
6 subpoena is requested; and (4) the identity of the party serving the  
7 subpoena. If a subpoena is served requesting Allergan's Confidential  
8 Information, Ellen L. Darling should be notified pursuant to this  
9 provision. If a subpoena is served requesting Plaintiff's Confidential  
10 Information, Rosemary M. Rivas should be notified pursuant to this  
11 provision. The Supplying Party will have up to and including the  
12 production date set forth in the subpoena to file objections to or a motion  
13 to quash the subpoena in the court from which the subpoena was issued,  
14 and the Supplying Party has the burden and the expense of seeking the  
15 protection in the applicable court. The person receiving the subpoena or  
16 other process shall cooperate with the Supplying Party in any  
17 proceeding related thereto. Additionally, the person subpoenaed must  
18 inform the subpoena's issuer of this Order and provide the subpoena's  
19 issuer with a copy of this Order. No party will object to the Supplying  
20 Party having a reasonable opportunity to appear in any litigation or  
21 proceeding commanding disclosure of such protected material for the  
22 sole purpose of seeking to prevent or restrict disclosure thereof. In no  
23 event shall Confidential Information be produced prior to the expiration  
24 of ten business days following the date on which the Receiving Party  
25 provides notice to the Supplying Party. The Confidential Information  
26 shall remain confidential and subject to this Protective Order pending  
27 the Court's ruling on the Supplying Party's objections or motion to  
28 quash, and any subsequent writ or appeal.

1           14. Counsel shall take all reasonable and necessary steps to  
2 assure the security of any Confidential Information and will limit access  
3 to Confidential Information to those persons listed in Paragraph 9 of  
4 this Protective Order.

5           15. Any Supplying Party may designate as Confidential  
6 Information or withdraw a Confidential Information designation from  
7 any material that it has produced ("Redesignated Material"), provided,  
8 however, that such redesignation shall be effective only as of the date of  
9 such redesignation. Such redesignation shall be accomplished by  
10 notifying counsel for each party in writing of such redesignation. Upon  
11 receipt of any such written redesignation, counsel shall (i) not make any  
12 further disclosure or communication of such Redesignated Material  
13 except as provided for in this Protective Order; (ii) take reasonable steps  
14 to notify any persons known to have possession of any Redesignated  
15 Material of such redesignation under this Protective Order; and  
16 (iii) promptly endeavor to procure all copies of such Redesignated  
17 Material from any persons known to have possession of any  
18 Redesignated Material who are not entitled to receipt under  
19 Paragraph 9. Notwithstanding the foregoing, it is up to the Supplying  
20 Party to initiate action, which the Receiving Party will not oppose, to  
21 retrieve from the Court or place under seal Redesignated Material that  
22 the Receiving Party submitted to the Court prior to the redesignation.

23           16. Prior to the disclosure of any Confidential Information to any  
24 person identified in Paragraph 9 (other than the Court and its staff),  
25 such person shall be provided with a copy of this Protective Order, which  
26 he or she shall read. Upon reading this Protective Order, such person  
27 shall complete and sign a copy of the Certification that is appended to  
28 this Protective Order, acknowledging that he or she has read this



1 Protective Order and shall abide by its terms. A file of all executed  
2 Certifications shall be maintained by outside counsel for the party  
3 obtaining them and shall be made available, upon request, for inspection  
4 by the Court in camera. Persons who come into contact with  
5 Confidential Information for clerical or administrative purposes, and  
6 who do not retain copies or extracts thereof, are not required to execute  
7 Certifications.

8 17. Any party may request at any time permission to disclose  
9 Confidential Information to a person other than those permitted under  
10 Paragraph 9, or to use such information in a manner otherwise  
11 precluded by this Protective Order, by serving a written request upon  
12 the Supplying Party's counsel. Any such request shall state the  
13 material the party wishes to disclose, to whom it wishes to make  
14 disclosure and the reason and purpose therefor. The Supplying Party or  
15 its counsel shall thereafter respond to the request in writing (by hand  
16 delivery or facsimile transmission) within ten business days of its  
17 receipt of such request, and if consent is withheld, it shall state the  
18 reasons why consent is being withheld. A failure to so respond within  
19 such ten-day period shall constitute a denial of the request. If, where  
20 consent is withheld, the Requesting Party and the Supplying Party are  
21 subsequently unable to agree on the terms and conditions of disclosure,  
22 disclosure may only be made in accordance with the Supplying Party's  
23 designation of the material unless and until differing treatment is  
24 directed pursuant to an order of the Court.

25 18. Any party may object to the propriety of the designation (or  
26 redesignation) of specific material as "Confidential Information" by  
27 serving a written objection upon the Supplying Party's counsel. The  
28 Supplying Party or its counsel shall thereafter, within ten calendar

1 days, respond (by hand delivery, facsimile transmission, or email) to  
2 such objection in writing by either: (i) agreeing to remove the  
3 designation; or (ii) stating the reasons for such designation. If the  
4 Objecting Party and the Supplying Party are subsequently unable to  
5 agree upon the terms and conditions of disclosure for the material(s) in  
6 issue, the Objecting Party may move the Court for an order removing or  
7 modifying the disputed designation. On such a motion the Supplying  
8 Party shall have the burden of proving that the material is Confidential.  
9 The material(s) in issue shall continue to be treated in the manner as  
10 designated by the Supplying Party until the Court orders otherwise.

11 19. Notwithstanding any other provisions of this Protective  
12 Order, nothing in the foregoing shall restrict any party's counsel from  
13 rendering advice to its clients with respect to this Action and, in the  
14 course thereof, relying upon Confidential Information, provided that in  
15 rendering such advice, counsel shall not disclose any other party's  
16 Confidential Information other than in a manner provided for in this  
17 Protective Order.

18 20. To the extent that any Confidential Information is, in whole  
19 or in part, contained in, incorporated in, reflected in, described in, or  
20 attached to any pleading, motion, memorandum, appendix, or other  
21 judicial submission, the submission shall be made to the Court only as  
22 set forth herein. Such submission shall be filed in accordance with the  
23 provisions of L.R. 79-5, Local Rules – Central District of California, as a  
24 "Sealed Document" and shall bear the following statement for viewing  
25 by the Court:

26 **CONDITIONALLY UNDER SEAL**

27 **Contents hereof are confidential and are subject to**  
28 **a Protective Order of the Court governing the use**

1                   **and dissemination of such contents. The contents**  
2                   **shall remain sealed and shall not be viewed**  
3                   **without express order of the Court.**

4           21. When submitting Confidential Information pursuant to  
5 Paragraph 20 of this Protective Order, the submitting party shall  
6 submit only those pages of the deposition transcript, document, or other  
7 matter containing Confidential Information that are cited, referred to, or  
8 specifically relied on by the submitting party. The submitting party  
9 shall not submit or lodge the entirety, or other portions, of the deposition  
10 transcript, document, or other matter containing Confidential  
11 Information.

12           22. Nothing herein shall be construed to affect in any manner  
13 the admissibility at trial or any other court proceeding of any document,  
14 testimony, or other evidence.

15           23. Upon the conclusion of this Action, including any appeals  
16 related thereto, at the written request and option of the Supplying  
17 Party, all Confidential Information and any and all copies, summaries,  
18 notes, compilations (electronic or otherwise), and memoranda related  
19 thereto, shall be returned and/or certified for destruction within thirty  
20 calendar days to the Supplying Party, provided, however, that counsel  
21 may retain their attorney work product and all court-filed documents  
22 even though they contain Confidential Information, but such retained  
23 work product and court-filed documents shall remain subject to the  
24 terms of this Protective Order. At the written request of the Supplying  
25 Party, any person or entity having custody or control of recordings,  
26 notes, memoranda, summaries or other written materials, and all copies  
27 thereof, relating to or containing Confidential Information shall deliver  
28 to the Supplying Party an affidavit certifying that reasonable efforts

1 have been made to assure that all such Confidential Information and  
2 any copies thereof, any and all records, notes, memoranda, summaries,  
3 or other written material regarding the Confidential Information (except  
4 for attorney work product and court filed documents as stated above)  
5 have been delivered to the Supplying Party in accordance with the terms  
6 of this Protective Order.

7 24. If Confidential Information is disclosed to any person other  
8 than in the manner authorized by this Protective Order, the party  
9 responsible for the disclosure shall immediately upon learning of such  
10 disclosure inform the Supplying Party of all pertinent facts relating to  
11 such disclosure and shall make all reasonable efforts to prevent  
12 disclosure by each unauthorized person who received such information.

13 25. Nothing contained in this Protective Order shall preclude  
14 any party from using its own Confidential Information in any manner it  
15 sees fit, without prior consent of any party or the Court.

16 26. This Protective Order does not address the offering of  
17 Confidential Information in evidence at trial or any court hearing, but  
18 nothing contained in this Protective Order shall preclude any party from  
19 moving the Court at an appropriate time for an order that the evidence  
20 be received in camera or under other conditions to prevent unnecessary  
21 disclosure.

22  
23 **DISCLOSURE OF COMMUNICATIONS COVERED**  
24 **BY THE ATTORNEY-CLIENT PRIVILEGE AND**  
**WORK-PRODUCT PROTECTION**

25 27. The following provisions of Paragraphs 28 through 31(j)  
26 apply to and govern the disclosure, in connection with this Action, of a  
27 communication or information covered by the attorney-client privilege or  
28 work-product protection.

1           28. The term "Privileged Information" means and refers to any  
2 communication, information, or documents subject to a claim of  
3 attorney-client privilege, work product protection, or any other legal  
4 privilege protecting the communication, information, or document from  
5 discovery.

6           29. No privilege or protection applicable to any Privileged  
7 Information is waived by disclosure of the Privileged Information in  
8 connection with this Action. Disclosure of any Privileged Information in  
9 connection with this Action is not, shall not constitute, and shall not be  
10 deemed to be, a waiver of any applicable privilege or protection in any  
11 other federal or state proceeding.

12           30. If Privileged Information is inadvertently produced to a party  
13 or parties ("Inadvertently Produced Privileged Information"), nothing in  
14 this Protective Order shall relieve counsel for any Receiving Party of any  
15 existing duty or obligation, whether established by case law, rule of  
16 court, regulation, or other authority, to return, and to not review, any  
17 privileged documents or attorney work product of a Supplying Party,  
18 without needing to be requested by the Supplying Party to do so.  
19 Rather, in the event that counsel for any Receiving Party becomes aware  
20 that the Receiving Party is in possession of what appears to be  
21 Inadvertently Produced Privileged Information, then counsel for the  
22 Receiving Party shall immediately: (i) cease any further review of the  
23 Inadvertently Produced Privileged Information; (ii) return to the  
24 Supplying Party or destroy all copies of the Inadvertently Produced  
25 Privileged Information within the possession, custody or control of the  
26 Receiving Party; and (iii) take reasonable steps to ensure the return or  
27 destruction of any copies of the Inadvertently Produced Privileged  
28 Information that the Receiving Party disseminated to other persons.

1           31. If a party or nonparty discloses or produces (i) Privileged  
2 Information or (ii) any other communication, information, or document  
3 that the party claims is irrelevant or otherwise nondiscoverable  
4 (collectively, "Privileged and/or Nondiscoverable Information"):

- 5           a. The disclosure or production of any Privileged and/or  
6 Nondiscoverable Information by the Supplying Party shall  
7 not be deemed an admission by the Supplying Party that  
8 such Privileged and/or Nondiscoverable Information should  
9 be disclosed or produced in this Action.
- 10          b. The Supplying Party may request the return of all Privileged  
11 and/or Nondiscoverable Information within a reasonable  
12 amount of time after the Supplying Party actually discovers  
13 that the Privileged and/or Nondiscoverable Information was  
14 produced.
- 15          c. The claw-back request shall be made in writing, shall  
16 identify with reasonable particularity (*e.g.*, by Bates number,  
17 if available) the Privileged and/or Nondiscoverable  
18 Information that the party requests be returned, and shall  
19 state the basis for requesting the return of the Privileged  
20 and/or Nondiscoverable Information.
- 21          d. Upon receiving the claw-back request, the Receiving Party  
22 must return all hard copies of the Privileged and/or  
23 Nondiscoverable Information in its possession, custody, or  
24 control to the Supplying Party, and the Receiving Party must  
25 also permanently delete all electronic copies of the Privileged  
26 and/or Nondiscoverable Information in its possession,  
27 custody, or control, except that the Receiving Party may—  
28 after providing written notice to the Supplying Party—



- 1 maintain one sealed copy of the Privileged and/or  
2 Nondiscoverable Information for the sole purpose of delivery  
3 to the Court for *in camera* review, if necessary.
- 4 e. The Receiving Party shall also take reasonable steps to  
5 ensure the return or destruction of any copies of the  
6 Privileged and/or Nondiscoverable Information that the  
7 Receiving Party disseminated to other persons.
- 8 f. Within ten business days after receiving the claw-back  
9 request from the Supplying Party and subject to Paragraph  
10 32(d) above, the Receiving Party must certify in writing that  
11 all hard and electronic copies of the Privileged and/or  
12 Nondiscoverable Information identified in the claw-back  
13 request have been returned, destroyed, and deleted.
- 14 g. If requested in writing by the Receiving Party, the Supplying  
15 Party shall provide a privilege log for the Privileged and/or  
16 Nondiscoverable Information within ten business days after  
17 receiving the written request from the Receiving Party.
- 18 h. In the event that the Receiving Party contends the  
19 documents are not privileged, protected, or otherwise exempt  
20 from discovery as asserted by the Supplying Party, the  
21 Receiving Party may, following the return and destruction of  
22 the Privileged and/or Nondiscoverable Information, challenge  
23 the claim through a motion to compel or other pleading with  
24 this Court, subject to the provisions of Rules 26 and 37, Fed.  
25 R. Civ. P., and L.R. 37-1 through 37-4, Local Rules – Central  
26 District of California. Any review by the Court of the  
27 materials or documents in dispute shall be *in camera*.  
28

- 1 i. If the Receiving Party does not challenge the Supplying  
2 Party's claim of privilege, protection, or exemption from  
3 discovery, or if the Court determines that the materials or  
4 documents are privileged, protected, or exempt from  
5 discovery, the Privileged and/or Nondiscoverable Information  
6 and any information derived therefrom shall not be used  
7 against the Supplying Party in this Action or in any other  
8 state or federal proceeding.
- 9 j. Mere failure to diligently screen documents or other  
10 information before producing them shall not preclude a party  
11 from seeking and obtaining the return of Privileged and/or  
12 Nondiscoverable Information and does not waive any  
13 applicable privilege, protection, or exemption from discovery  
14 in this or any other federal or state proceeding.

15 **MISCELLANEOUS PROVISION**

16 32. The terms of this Protective Order may be amended or  
17 modified by written agreement of the parties or upon motion and order  
18 of the Court. This Protective Order shall continue in force until  
19 amended or superseded by express order of the Court, and shall survive  
20 any final judgment or settlement in this Action.

21 **IT IS SO ORDERED.**

22  
23 Dated: 5/26/10



24 ~~Philip S. Gutierrez~~ *CHARLES F. EICK*  
25 ~~United States District Court Judge~~  
26 *MAGISTRATE JUDGE*  
27  
28

**APPENDIX**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**IVAN GOLDSMITH, on behalf  
of himself and all others  
similarly situated,**

**Plaintiff,**

**vs.**

**ALLERGAN, INC., a Delaware  
corporation,**

**Defendant.**

**CASE NO. 09-CV-7088 PSG**

**CERTIFICATION**

The undersigned acknowledges that he or she has read the Protective Order Regarding Confidential and Privileged Information (the "Protective Order"), understands the terms thereof, and agrees to be bound thereby. The undersigned further agrees to submit to the jurisdiction of the Court for purposes of enforcement of the provisions of the Protective Order and understands that the Court may impose sanctions for any violation of the Protective Order.

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
Signature

11417602

**[PROPOSED] PROTECTIVE ORDER**